

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**NOT FOR PUBLICATION**

DAVID TRUMPET,

Petitioner,

– against –

JOSEPH T. SMITH,

Respondent.

**MEMORANDUM & ORDER**

14-CV-4231 (ERK)

KORMAN, J.:

Petitioner David Trumpet pleaded guilty to two counts of predatory sexual assault; one count of robbery in the third degree; two counts of criminal sexual act in the first degree; six counts of sexual abuse in the first degree; and one count each of assault in the second degree, assault in the third degree, criminal possession of a weapon in the fourth degree, and criminal possession of stolen property in the fifth degree. Pet. for Habeas at Page ID #1. On March 4, 2009, a Kings County trial judge sentenced petitioner to ten years to life. *Id.* After pursuing various state court post-conviction proceedings, petitioner filed the instant petition for a writ of habeas corpus on June 26, 2014. *Id.* Petitioner asserts three grounds for relief: denial of right to appeal; ineffective assistance of counsel; and involuntary guilty plea. *Id.*

The petition is time-barred. Indeed, because petitioner did not directly appeal his conviction or sentence within the time permitted for such review, he had only one year and thirty days from March 4, 2009, in which to file a petition for a writ of habeas corpus—*i.e.*, by April 3, 2010. *See* 28 U.S.C. § 2244(d)(1)(A). Yet petitioner did not file until June 26, 2014. Pet. for Habeas at Page ID #6. Moreover, tolling does not apply, as petitioner did not begin state court post-conviction proceedings until February 26, 2011. *See* Aff. of Ass't Dis't Att'y Terrence F.

Heller, Sept. 3, 2014, ECF No. 5, at ¶ 9. Lastly, petitioner does not assert actual innocence or submit any ground upon which an exception to time-bar might apply. *See generally* Pet.'s Reply Mem. Supp. Pet. for Habeas. Nor does petitioner's reply brief respond to the motion to dismiss on the ground that the petition is untimely. *Id.*

The petition for a writ of habeas corpus is dismissed and I decline to issue a certificate of appealability.

**SO ORDERED.**

Brooklyn, New York  
February 20, 2015

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Edward R. Korman  
Senior United States District Judge